

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRISTOBAL VELOZ,

Defendant.

Case No. CR00-5338FDB

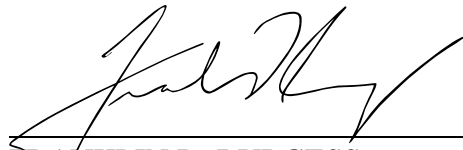
ORDER DENYING MOTION TO  
REDUCE SENTENCE

Cristobal Veloz, who was sentenced for conspiracy to distribute cocaine and for distribution of cocaine base to the statutory mandatory minimum sentence of 120 months (release date August 24, 2009), moves for re-sentencing under the revised Sentencing Guidelines. The Government opposes the motion arguing that the new Guidelines provide that “a reduction in the defendant’s term of imprisonment is not authorized under 18 U.S.C. § 3582(c) and is not consistent with this policy statement if ... an amendment does not have the effect of lowering the defendant’s applicable guideline range because of the operation of ... another statutory provision (e.g., a statutory mandatory minimum term of imprisonment).” Sentencing Guidelines § 1B1.10 app. note 1(A). Accordingly, as courts have consistently recognized, where a statutory mandatory minimum sentence is applicable, the passage of a retroactive guidelines amendment is irrelevant. *See, e.g., United States v. Mullanix*, 99 F.3d 323, 324 (9<sup>th</sup> Cir. 1996).

1 This Court applied the general rule in *United States v. Bell*, CR05-5477FDB, concluding that  
2 a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c) and  
3 is not consistent with policy statement if an amendment does not have the effect of lowering the  
4 defendant's applicable guideline range because of the operation of another statutory provision, such  
5 as the statutory minimum term of imprisonment. In Veloz' case, his total offense level would be  
6 reduced under the new Guideline range from 34 to 32 with a new range of 151 to 188 months.  
7 When Veloz was sentenced, however, the Court departed downward and imposed the mandatory  
8 minimum sentence of 120 months. Accordingly, Veloz' motion for a reduction of sentence must be  
9 denied because Veloz received the statutory minimum sentence 120 months. Veloz' request for  
10 appointment of counsel will also be denied.

11 NOW, THEREFORE, IT IS ORDERED: Defendant Cristobal Veloz' Motion for Re-  
12 sentencing and for appointment of counsel [Dkt. # 160] is DENIED.

13 DATED this 16<sup>th</sup> day of June, 2008.

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16 FRANKLIN D. BURGESS  
17 UNITED STATES DISTRICT JUDGE  
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